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Chapter Five—Agreement Preparation and Approval Process

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Chapter 5

Agreement Preparation & Approval Process

5.1 FINAL DRAFT AGREEMENT

After completion of the negotiations, the Project Manager can prepare the final agreement. The agreement would include the final scope of work, schedules and compensation terms.

All agreements have the same general form and format. The basic components of an agreement are:

- agreement number,
- project description,
- parties to the agreement,
- an introduction,
- the general provisions,
- detailed requirements (scope of services),
- project schedule,
- fee structure,
- consultant performance of work provisions,
- consultant warranty,
- Department services,
- agreement termination clause,
- scope of agreement clause,
- sub-contract clause,
- successor and assignments clause,
- nondiscrimination clause,
- laws of Delaware clause,
- signature page,
- Truth-in-Negotiation Certification (all agreements),

The following attachments are required on Federal-Aid agreements only:

- Consultant's Certification Statement,
- Certification of the Delaware Department of Transportation, and
- Certification of Federal-Aid Contracts.

All agreements must have a termination clause. The termination clause can apply at the completion of task(s), phase(s), or the project, or at a pre-determined date or time period. The duration of open-end contracts is limited to three years. Previously assigned tasks may extend past this period, but no new tasks may be assigned.

5.2 APPROVAL PROCESS

Four original-signed copies of the final agreement are required for projects funded entirely by

State funds. An additional copy (five copies altogether) is required for jointly funded projects.

The Project Manager should ensure that the signature page include a date line for each signature, the firm's Delaware Business License number and the firm's Federal Employer Identification Number. The official effective date for a contract is the date of signature by the Director of Administration. The correct sequence for obtaining signatures is as follows:

- "Approval as to Process" by the Consultant Control Coordinator,
- "Approval as to Form" by the Deputy Attorney General,
- signature on behalf of the consultant by a responsible corporate officer,
- Attest of the firm's signature by the firm's secretary or appropriate officer with imprint of corporate seal,
- signature on behalf of the Department by the responsible Office Director, and
- Attest of the Director's signature by the Director of Administration with imprint of the Department's seal.

5.2.1 APPROVAL AS-TO-FORM

The Project Manager must submit the required number of copies of the final agreement to the Deputy Attorney General for approval As-To-Form.

5.2.2 APPROVAL AS-TO-PROCESS

After receiving the approved As-To-Form copies, the Project Manager forwards them to the Consultant Control Coordinator for approval As-To-Process.

5.2.3 SPONSORING AGENCY REVIEW

On jointly funded projects, as noted above, the Project Manager, concurrently with obtaining the approvals described in Sections 5.2.1 and 5.2.2, forwards one copy of the final draft agreement

to the appropriate sponsoring agency for review, comment and approval. [This submission is not required on FHWA funded projects.](#)

5.2.4 AGREEMENT EXECUTION

The Project Manager sends the final approved copies of the agreement to the Consultant for signature. The Consultant's corporate seal should be affixed to the agreement in addition to the required signatures.

After receiving the signed copies of the agreement, the Project Manager obtains the appropriate Director's signature, and requests the Director of Administration to officially execute the agreement on behalf of the Department. The submission to the Director of Administration must include a completed Agreement Transfer Form. (See Figure 5-1.)

The Director of Administration signs, dates and affixes the Department's seal to the agreement. This date is the recognized official date of the contract.

The Project Manager will ensure that the date of signature by the Director of Administration is transferred to any other date location within the agreement, normally on the first page.

5.2.5 NOTICE TO PROCEED

Upon execution of the final agreement, one executed agreement is sent to the firm. This transmittal usually includes the official Notice to Proceed.

For open-end agreements, a Notice to Proceed is issued upon completion of the parent agreement that both parties have agreed to the basic terms of the contract. However, as individual projects or assignment are defined and authorized, separate notices to proceed should be issued for each. The Project Manager should see other references to fiscal management of these types of agreements in Chapter 6.

5.2.6 FUNDING APPROVAL

The final executed copies of the agreement and a completed Consultant Information Form,

(Figure 5-2), are forwarded to the Office of Financial Management and Budget for funding approval. A copy of the Consultant's current Delaware Business License must be attached to the original agreements. For jointly sponsored projects, the Project Manager should submit three originals and one copy, with a copy of the sponsoring agency's approval. For projects funded entirely with state funds, two originals and one copy are transmitted.

The Project Manager receives an approved Project Authorization and Funding Form FS-1 when all funding and approvals have been obtained.

Open-end agreements which normally consist of multiple assignments receive authorization and funding, an approved FS-1, on an individual project basis. A Project Manager submits the agreed to tasks, Scope of Services, with the negotiated costs to Office of Financial Management and Budget to receive this approval.

The Project Manager sends one copy of the completely executed copy of the agreement to the Consultant Control Coordinator and the originating Section's Fiscal Officer.

5.2.7 DISTRIBUTION OF EXECUTED AGREEMENTS

To summarize, the distribution of the executed agreements during the final agreement process is as follows:

- one original to the Director of Administration, with a copy of the approved Form FS-1, this agreement is forwarded to the Finance Office, which is the designated depository for all original agreements,
- one original to the Office of Financial Management and Budget,
- one original to the sponsoring federal agency, with a copy of the approved Form FS-1,
- one original to the successful consultant,
- one original to the originating Section,

- one copy to the Consultant Control Coordinator,
- one copy to the Project Manager, and
- one copy to the Office of Audit and Regulatory Affairs.

5.3 PUBLIC NOTIFICATION

Receipt of the executed final agreement by the Consultant Control Coordinator is notice that negotiations have been successfully completed. Until this stage in the negotiation process, all rated firms could be requested to present a fee proposal, if negotiations failed with higher rated firms. The Department, through the Consultant Control Coordinator, has the legal responsibility of notifying by letter all the remaining firms that a contract has been entered into.

5.4 ACTIVITY REPORTS

The Director of Administration issues [quarterly](#) status reports to the Secretary on the current professional service contracting activity. The data shown on the Agreement Transfer Forms is used in developing these reports.

Figure 5-1
Agreement Transfer Form

| DEPARTMENT OF TRANSPORTATION AGREEMENT TRANSFER FORM | |
|---|--|
| TO: | _____ Director of Administration |
| VIA: | _____ (Initiating Director) |
| FROM: | _____ (Section Head) |
| DATE: | |
| RE: | <u>Agreement/Contract Attest and Log</u> |
| 1. DESCRIPTION OF AGREEMENT/ <u>CONTRACT</u> : | |
| <u>(e.g., construction*, suburban street, transit, design,</u> | |
| <u>planning, traffic operations, maintenance operations, etc.)</u> | |
| 2. PARTY AGREEMENT/ <u>CONTRACT</u> IS WITH: | |
| 3. ORIGINATING SECTION: | |
| 4. STATE AGREEMENT/ <u>CONTRACT</u> NUMBER: | |
| 5. MONETARY FIGURE: | |
| <u>_____</u> *If a construction project, please include the following: | |
| <u>_____</u> Estimate Amount: | |
| <u>_____</u> Award Amount: | |
| This form shall be attached to all agreements/contracts, including supplementals, and sent to the Director of Administration. | |

Figure 5-2

Consultant Information Form

| | | | | | |
|-----------------------------------|---------------|-------------|----------------|-------------------|-------|
| Project Name: | | | Consultant: | | |
| Agreement No.: | | | Upset Limit \$ | | |
| Section Responsible: | | | Date: | | |
| | P.E. location | P.E. design | C.E. | P.E. state forces | TOTAL |
| Federal Project No. Participating | | | | | |
| State Project No. Participating | | | | | |
| | | | | | |
| Federal Project No. Participating | | | | | |
| State Project No. Participating | | | | | |
| | | | | | |
| Federal Project No. Participating | | | | | |
| State Project No. Participating | | | | | |
| | | | | | |
| GRAND TOTAL | | | | | |
| Description and Notes: | | | | | |